

Central Valley Regional Water Quality Control Board

24 October 2019

Rev. Michael Vaughan
Roman Catholic Bishop of Sacramento
2110 Broadway
Sacramento, CA 95818

CERTIFIED MAIL
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Via email: jgonsalves@scd.org

OFFER TO SETTLE ADMINISTRATIVE CIVIL LIABILITY, ROMAN CATHOLIC BISHOP OF SACRAMENTO, A CORPORATION SOLE, TRINITY PINES CATHOLIC CENTER, PLACER COUNTY, WDID 5S31C384408

This letter contains an offer from the Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team to settle potential claims for administrative civil liability arising out of alleged violations by the Roman Catholic Bishop of Sacramento, a Corporation Sole, (Discharger) of the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ (General Permit) at the Trinity Pines Catholic Center construction project located at 28000 Rollins Lake Road near the City of Colfax (Project). As the owner of the Project and the legally responsible person enrolled in the General Permit, the Discharger is responsible for complying with all elements of the General Permit and is strictly liable for penalties associated with non-compliance. Hereafter, this letter will be referred to as the "Settlement Offer." This Settlement Offer was prepared following a meeting with the Discharger on 11 July 2019 and follow-up communications with the Discharger to discuss and clarify the factors used to prepare the Settlement Offer.

This Settlement Offer provides the Discharger with an opportunity to resolve the alleged violations through payment of fifty-six four hundred twenty dollars (\$56,420).

Please read this letter carefully and respond no later than 1 November 2019.

DESCRIPTION OF VIOLATIONS

On 16 November 2018, Central Valley Water Board staff inspected the Project and observed numerous conditions that violated the General Permit. Perimeter sediment control Best Management Practices (BMPs) had not been deployed at the Project. Linear sediment control BMPs had not been installed on inactive slopes. Erosion control BMPs had not been deployed on inactive areas. Staff's review of the Project's Storm

KARL E. LONGLEY SCD, P.E., CHAIR | PATRICK PULUPA, ESQ., EXECUTIVE OFFICER

Water Pollution Prevention Plan (SWPPP) found that it did not meet the Construction General Permit's requirements for Risk Level 2 projects. The Project SWPPP failed to identify appropriate erosion control BMPs to be installed prior to storm events and it failed to identify sampling locations for stormwater discharges.

Staff communicated these concerns to the Discharger's grading contractor at the end of the inspection. The Discharger's Qualified SWPPP Practitioner (QSP) and the Discharger's Construction Coordinator were notified of these concerns by email on 19 November 2018.

A follow-up inspection was conducted on 20 November 2018. The Project was still in violation of the General Permit. The Project lacked perimeter and linear sediment controls and erosion control BMPs were inadequate.

Board staff inspected the Project again on 27 and 29 November 2018 during storm events. During the 27 November 2018 inspection, repairs to failed BMPs on one of the slopes were observed. The multi-purpose building pad, the emergency access road, and the new access road had still not been protected with erosion and sediment control BMPs. No discharges were observed during the 27 November 2018 inspection, but staff did observe rills which are evidence of recent sediment discharges created by runoff from areas with exposed soil. No substantial progress towards protecting the Project with BMPs had been made. During the 29 November 2018 inspection, discharges with turbidity measuring between 756 Nephelometric Turbidity Units (NTUs) and 2,730 NTUs were observed leaving the Project site. The General Permit's Numeric Action Level (NAL) for turbidity is 250 NTUs. The BMPs observed during the 29 November 2018 inspection had not substantially changed since the 27 November 2018 inspection.

Attachment A contains the Water Board's 28 December 2018 Notice of Violation with the 16, 20, 27 and 29 November 2018 Inspection Reports which describe the violations.

This Settlement Offer alleges the following three (3) violations: (1) the SWPPP was inadequate because it failed to specify applicable erosion and sediment control BMPs and monitoring locations as required for Risk Level 2 projects (General Permit Section XIV.A.3.); (2) the Project discharged turbid runoff because BMPs that achieved the Best Available Technology Economically Achievable/Best Conventional Pollutant Control Technology (BAT/BCT) standard were not used (General Permit Attachment D, Effluent Standard A.1.b.); and, (3) the Discharger failed to install appropriate erosion control BMPs on active and inactive areas of the Project (General Permit Attachment D, Sections D.2. and E.3.).

STATUTORY LIABILITY

Pursuant to Section 13385 of the California Water Code, the Discharger is liable for administrative civil liabilities of up to \$10,000 per violation for each day in which the violation occurs and \$10 per gallon discharged in excess of the first 1,000 gallons. The statutory minimum civil liability is the economic benefit resulting from the violations. The

State Water Resources Control Board's Water Quality Enforcement Policy (Enforcement Policy) states that the minimum penalty is to be the economic benefit plus 10%. For the violations described in the attachments, the maximum potential liability for the violations is over \$180,000 and the minimum liability is \$12,870.

PROPOSED SETTLEMENT OFFER

The Central Valley Water Board's Prosecution Team proposes to resolve the violation(s) with this Settlement Offer of \$56,240. This Settlement Offer was determined based on an assessment of the factors set forth in Water Code section 13385(e) using the penalty methodology set forth in the Enforcement Policy. The enclosed "Penalty Calculation Methodology" describes in detail how the penalty amount was calculated. The Prosecution Team believes that the proposed resolution of the alleged violation(s) is fair and reasonable, fulfills the Central Valley Water Board's enforcement objectives, and is in the best interest of the public.

Should the Discharger choose *not* to accept this Settlement Offer, please be advised that the Central Valley Water Board Prosecution Team reserves the right to seek a higher liability amount, up to the maximum allowed by statute, either through issuance of a formal administrative civil liability complaint or by referring the matter to the Attorney General's Office. The Central Valley Water Board Prosecution Team also reserves the right to conduct additional investigation, including issuance of investigation orders and/or subpoenas to determine the number of gallons discharged and whether additional violations occurred. Any additional violations and gallons of discharge subjecting the Discharger to liability may be included in a formal enforcement action. The Discharger can avoid the risks inherent in a contested enforcement action and settle the alleged violation(s) by accepting this Settlement Offer. Please note that the Settlement Offer does not address liability for any violation that is not specifically identified in the attached inspection reports.

Responding to the Settlement Offer

If the Discharger chooses to accept this Settlement Offer, then the enclosed *Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver)* shall be completed and submitted no later than **1 November 2019** to the following address:

Central Valley Regional Water Quality Control Board
Attention: Michael Fischer, Enforcement Section
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

Important! - Upon receipt of the *Acceptance and Waiver*, this settlement will be publicly noticed for a 30-day comment period as required by federal regulations. If no substantive comments are received within the 30 days, the Prosecution Team will ask the Central Valley Water Board's Executive Officer to formally endorse *the Acceptance and Waiver* as an order of the Central Valley Water Board. An invoice will then be

mailed to the Discharger requiring payment of the administrative civil liability within 30 days of the date of the invoice.

If, however, substantive comments are received in opposition to this settlement and/or the Executive Officer declines to accept the settlement, then the Settlement Offer may be withdrawn. In this case, the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued, and the matter may be set for a hearing.

If you have any questions about this settlement offer, please contact Michael Fischer at (916) 464-4663 or at michael.fischer@waterboards.ca.gov.

Original signed by

ANDREW ALTEVOGT
Assistant Executive Officer

Enclosures: Acceptance of Settlement Offer and Waiver of Right to a Hearing
Penalty Calculation Methodology

cc: Greg Gholson, U.S. EPA, Region IX, San Francisco
Nickolaus Knight, Office of Enforcement, State Water Board, Sacramento
Bayley Toft-Dupuy, Office of Chief Counsel, State Water Board, Sacramento
Patrick Pulupa, Executive Officer, Central Valley Water Board, Rancho Cordova

ORDER NO. R5-2019-0526
ACCEPTANCE OF SETTLEMENT OFFER AND WAIVER OF RIGHT TO A HEARING
FOR
ROMAN CATHOLIC BISHOP OF SACRAMENTO, A CORPORATION SOLE
TRINITY PINES CATHOLIC CENTER
PLACER COUNTY

By signing below and returning this Acceptance of Settlement Offer and Waiver of Right to Hearing (Acceptance and Waiver) to the Central Valley Water Board, Roman Catholic Bishop of Sacramento, a Corporation Sole (Discharger) hereby accepts the Settlement Offer described in the letter dated 13 May 2019 and titled Offer to Settle Administrative Civil Liability, Roman Catholic Bishop of Sacramento, a Corporation Sole, Trinity Pines Catholic Center, Placer County, WDID 5S31C384408 and waives the right to a hearing before the Central Valley Water Board to dispute the alleged violations described in the Settlement Offer and its enclosures.

The Discharger agrees that the Settlement Offer shall serve as a complaint pursuant to Article 2.5 of the Water Code and that no separate complaint is required for the Central Valley Water Board to assert jurisdiction over the alleged violations. The Discharger agrees to perform the following:

- Pay an administrative civil liability in the sum of **fifty-six thousand four hundred twenty dollars (\$56,420)** by cashier's check or certified check made payable to the "State Water Resources Control Board Cleanup and Abatement Account". This payment shall be deemed payment in full of any civil liability pursuant to Water Code section 13385 that might otherwise be assessed for violations described in the Settlement Offer and its enclosures.
- Fully comply with the conditions of the *General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities, Order 2009-0009 DWQ* (General Permit) at the Trinity Pines Catholic Center construction project.

The Discharger understands that by signing this *Acceptance and Waiver*, the Discharger has waived its right to contest the allegations in the Settlement Offer and the civil liability amount for the alleged violation(s). The Discharger understands that this *Acceptance and Waiver* does not address or resolve any liability for any violation not specifically identified in the Settlement Offer and its enclosures.

Upon execution by the Discharger, the *Acceptance and Waiver* shall be returned to the following address:

Central Valley Regional Water Quality Control Board
Attention: Michael Fischer, Enforcement Section
11020 Sun Center Drive, Suite 200
Rancho Cordova, CA 95670

The Discharger understands that federal regulations require the Prosecution Team to publish notice of and provide at least 30 days for public comment on any proposed

resolution of an enforcement action for violations of an NPDES permit, such as the General Permit. Accordingly, this *Acceptance and Waiver*, prior to being formally endorsed by the Central Valley Water Board Executive Officer (acting as head of the Advisory Team), will be published as required by law for public comment.

If no comments are received within the notice period that cause the Prosecution Team to reconsider the Settlement Offer, then the Prosecution Team will present this *Acceptance and Waiver* to the Central Valley Water Board's Executive Officer for formal endorsement on behalf of the Central Valley Water Board.

The Discharger understands that if significant comments are received in opposition to the settlement, then the offer may be withdrawn by the Prosecution Team. If the Settlement Offer is withdrawn, then the Discharger will be notified and the Discharger's waiver pursuant to the *Acceptance and Waiver* will also be treated as withdrawn. The unresolved violation(s) will be addressed in a formal enforcement action. An administrative civil liability complaint may be issued and the matter may be set for a hearing.

The Discharger understands that once this *Acceptance and Waiver* is formally endorsed, the full payment is a condition of this *Acceptance and Waiver*. An invoice will be sent upon endorsement, and full payment will be due within 30 days of the date of the invoice.

I hereby affirm that I am duly authorized to act on behalf of and to bind the Discharger in the making and giving of this *Acceptance and Waiver*.

ROMAN CATHOLIC BISHOP OF SACRAMENTO, A CORPORATION SOLE

By: Original signed by Rev. Michael D. Vaughan

Title: Vicar General

Date: 11/13/2019

IT IS SO ORDERED, pursuant to California Water Code section 13385.

By: PATRICK PULUPA, Executive Officer

Date: _____